

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2001-438-C - ORDER NO. 2002-68

JANUARY 30, 2002

IN RE:	Application of NTERA, Inc. for a Certificate)	ORDER GRANTING
	of Public Convenience and Necessity to)	CERTIFICATE
	Provide Interexchange and Local Exchange)	
	Telecommunications Services and for)	
	Alternative and Flexible Regulation.)	

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of the Application of NTERA, Inc. ("NTERA" or the "Company") for authority to provide local exchange and intrastate interexchange telecommunications services within the State of South Carolina. The Company requests that the Commission regulate its local telecommunications services in accordance with the principles and procedures established for flexible regulation in Order No. 98-165 in Docket No. 97-467-C. In addition, the Company requests that the Commission regulate its business services offerings identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. The Application was filed pursuant to S.C. Code Ann. Section 58-9-280 (Supp. 2000), and the Rules and Regulations of the Commission.

By letter, the Commission's Executive Director instructed the Company to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. The Applicant complied with this instruction and

provided the Commission with proof of publication of the Notice of Filing. A Petition to Intervene was received from the South Carolina Telephone Coalition (“SCTC”) on November 30, 2001.

On December 11, 2001, counsel for SCTC filed with the Commission a Stipulation in which the Applicant stipulated that it would seek authority in non-rural local exchange (“LEC”) service areas of South Carolina and that it would not provide any local service to any customer located in a rural incumbent's service area, unless and until NTERA provided written notice of its intent prior to the date of the intended service. The Company also stipulated that it was not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas. NTERA agreed to abide by all State and Federal laws and to participate to the extent that it may be required to do so by the Commission in support of universally available telephone service at affordable rates. The SCTC withdrew its opposition to the granting of a statewide Certificate of Public Convenience and Necessity to the Company provided the conditions contained in the Stipulation are met. The Stipulation is approved and attached as Order Exhibit 1.

A hearing was commenced on January 17, 2002, at 11:30 a.m. in the Commission’s Hearing Room. The Honorable William Saunders, Chairman, presided. NTERA was represented by Scott Elliott, Esquire. Korhan Aydin, Chief Operating Officer for NTERA, appeared and testified on behalf of the Company. Jocelyn G. Boyd, Staff Counsel, represented the Commission Staff.

As Chief Operating Officer, Aydin is responsible for the day-to-day management of the Company. Additionally, he oversees the management of the technical and operational aspect of NTERA. The Company seeks to provide interexchange and local exchange telecommunications services in South Carolina. According to Aydin, NTERA intends to focus on providing its services to other businesses. Furthermore, NTERA intends to market its services through direct sales by the Company's employees; the Company has no intentions of telemarketing its services.

Aydin provided testimony on the Company's managerial, technical, and financial resources to provide telecommunications services in South Carolina. NTERA is currently operating in ten states and providing interexchange services in these ten states. Furthermore, according to the testimony, the Company is operating in good standing in all the states where it has been certificated to provide telecommunications services. Moreover, NTERA's application has never been denied in any state where the Company has applied for authority, nor has the Company ever been the subject of an investigation, fined or sanctioned by a federal or state regulatory body. Additionally, the testimony reveals NTERA has not received revenues from the completion of intrastate calls in South Carolina or marketed its services in South Carolina prior to receiving certification.

Regarding the Company's managerial resources to provide telecommunications services, NTERA's president is Engin Yesil. He has a Bachelor of Arts and a Master of Science in International Marketing and Finance. From 1993 until 1997, Yesil was the President/Chief Executive Officer of TechTel, Inc. While employed at TechTel, Inc., Yesil managed sales, marketing, public relations, trade shows, press tours, product

development, production, strategic relationships, and contract negotiations. Additionally, Yesil increased annual revenues from \$0 to \$8.3 million in two years. In 1997, Yesil became the President of NeTel, Inc. Yesil was employed with NeTel, Inc. until the year 2001. While at NeTel, Inc., Yesil analyzed and developed new business initiatives for NeTel, Inc. while traveling extensively. Yesil also managed communications, press relations, and advertising through multiple media channels. Aydin possesses a background in business consulting and accounting.

Regarding the Company's financial resources to provide telecommunications services in South Carolina, NTERA submitted the financial statements of Radiant Telecom, Inc. NTERA and Radiant Telecom, Inc. are both wholly-owned subsidiaries of Radiant Holding, Inc. To illustrate the Company's financial ability to provide the requested telecommunications services in South Carolina, NTERA submitted audited financial statements for the year ended December 31, 1999, and unaudited financial statements for the nine months ended September 31, 2000. Additionally, the Company filed financial statements for the period ended June 30, 2001, with the Commission.

The record also reveals the Company's technical resources to provide telecommunications services in South Carolina. According to the testimony, NTERA will initially resell the facilities of the existing local exchange carriers or underlying carriers that presently serve South Carolina. Aydin testified that NTERA will primarily resell the facilities and services of BellSouth. However, the Company will also use unbundled network elements and services purchased from BellSouth and other incumbent local exchange providers, where applicable, to provide service through the Company's

facilities. Aydin also testified that when NTERA installs facilities in South Carolina, the Company will probably provide voice, high speed data and internet access services through a combination of the latest technology switching and transport media comprised of the Lucent Technology 5 ESS Generic 13 switch module, ADSL/SDSL transport and Internet service equipment and the latest Optical multiplexer DAC's configuration. The Company's underlying carriers for its interexchange services are Global Crossing and Qwest.

The Company's customer service department is open twenty-four hours a day, seven days a week. The customer service contact person is Omar Pesantes and he can be reached at 1-866-MYNTERA. The Company's regulatory contact person is Aydin. NTERA's name and phone numbers will be printed on customers' monthly billing statements.

Aydin also stated that the Commission granting NTERA a certificate is in the public interest because consumers of telecommunications services within the Company's service territory will receive increased choice, improved quality of service, and heightened opportunities to obtain improved technology in homes and businesses. Moreover, Aydin added that market incentives for new and old telecommunications providers in South Carolina will be improved greatly through an increase in the diversity of suppliers and competition within the local exchange telecommunications market. Finally, Aydin stated that the granting of a certificate of authority to provide local exchange service will offer increased efficiency to the State's telecommunications

infrastructure through greater reliability of services and an increase in competitive choices.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. NTERA is organized as a corporation under the laws of the State of Florida and is authorized to do business as a foreign corporation in the State of South Carolina by the Secretary of State.

2. NTERA is a provider of local exchange and interexchange telecommunications services and wishes to provide its services in South Carolina.

3. NTERA has the managerial, technical, and financial resources to provide the services as described in its Application.

4. The Commission finds that NTERA's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. Section 58-9-280 (B)(3) (Supp. 2000).

5. The Commission finds that NTERA will support universally available telephone service at affordable rates.

6. The Commission finds that NTERA will provide services which will meet the service standards of the Commission.

7. The Commission finds that the provision of local exchange service by NTERA “does not otherwise adversely impact the public interest.” S.C. Code Ann. Section 58-9-280 (B)(5) (Supp. 2000).

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to NTERA to provide competitive intrastate resold and facilities-based non-rural local exchange service in South Carolina. The terms of the Stipulation between NTERA and SCTC are approved, and adopted as a part of this Order. Any proposal to provide such service to rural service areas is subject to the terms of the Stipulation. In addition, NTERA is granted authority to provide intrastate interLATA interexchange service and to originate and terminate toll traffic within the same LATA, as set forth herein, on a facilities-basis and through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), directory assistance, travel card service or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. NTERA shall file, prior to offering local exchange services in South Carolina, its final tariff of its local service offerings conforming to all matters discussed with Staff and comporting with South Carolina law in all matters. NTERA’s local telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for NTERA’s competitive intrastate local exchange services a rate structure incorporating

maximum rate levels with the flexibility for adjustment below the maximum rate levels that will have been previously approved by the Commission. Further, NTERA's local exchange service tariff filings are presumed valid upon filing, subject to the Commission's right within thirty (30) days to institute an investigation of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission. Further, any such tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

3. The Commission adopts a rate design for the long distance services of NTERA which are consistent with the principles and procedures established for alternative regulation of business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C.

Under the Commission approved alternative regulation, the business service offerings of NTERA including consumer card services, and operator services, are subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. However, pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission has modified alternative regulation by the re-imposition of rate caps with regard to certain "operator-assisted calls" where a customer uses a local exchange carrier's calling card to complete calls from locations which have not selected that local exchange carrier as their toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for

business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to NTERA also.

4. With regard to the interexchange residential service offerings of NTERA, the Commission adopts a rate design which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

5. NTERA shall not adjust its interexchange residential rates below the approved maximum level without notice to the Commission and to the public. NTERA shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for interexchange residential services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be

treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 2001).

6. If it has not already done so by the date of issuance of this Order, NTERA shall file its revised maximum long distance tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

7. NTERA is subject to access charges pursuant to Commission Order No. 86-584 in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

8. With regard to the Company's resale interexchange service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

9. NTERA shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If NTERA changes underlying carriers, it shall notify the Commission in writing.

10. With regard to the origination and termination of toll calls within the same LATA, NTERA shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the Federal

Communications Commission, pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209).

11. NTERA shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports can be found at the Commission's website at www.psc.state.sc.us/forms. The title of the forms which the Company shall utilize to file annual surveillance reports with the Commission is "Annual Information on South Carolina Operations for Interexchange Companies and AOS".

12. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

NTERA shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The Company shall utilize the "Authorized Utility Representative Information" form which can be located at the Commission's website at www.psc.state.sc.us/forms to file the names of these representatives with the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

13. NTERA shall conduct its business in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all

Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

14. The Company also requests a waiver of 26 S.C. Code Ann. Regs. 103-631 (Supp. 2001). NTERA plans to make arrangements with the incumbent local exchange carriers (ILECs) whereby the names of NTERA's customers will be included in the directories published by the ILECs. We grant the Company's request for a waiver of 26 S.C. Code Ann. Regs. 103-631 (Supp. 2001). The Company also seeks a waiver of 26 S.C. Code Ann. 103-612.2.3. According to the record, the Company's local exchange calling areas will initially mirror the service areas of the ILECs; therefore, NTERA requests a waiver of the map filing requirement. We find the Company's reason for requesting a waiver of Regulation 103-612.2.3 reasonable and we hereby grant a waiver of the map filing requirement. Additionally, the Company seeks a waiver of 26 S.C. Code Ann. Regs. 103-610, which requires the Company's books and records to be kept in the State of South Carolina. The Company desires to keep its books and records at its principal place of business. We find that it would be unusually difficult for the Company to maintain its books and records in South Carolina. It would be in the public interest to have the Company maintain its books and records at its principal place of business; therefore the Company's request for a waiver of Regulation 103-612.2.3 is granted. We also grant the Company's request to maintain its books in accordance with Generally Accepted Accounting Principles. However, the Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

15. Title 23, Chapter 47, South Carolina Code of Laws Ann., governs the establishment and implementation of a “Public Safety Communications Center,” which is more commonly known as a “911 system” or “911 service.” Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs NTERA to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating. Contact with the appropriate authorities is to be made before beginning telephone service in South Carolina. Accompanying this Order is an information packet from the South Carolina Chapter of the National Emergency Number Association (“SC NENA”) with contact information and sample forms. The Company may also obtain information by contacting the E911 Coordinator at the Office of Information Resources of the South Carolina Budget and Control Board. By this Order and prior to providing services within South Carolina, NTERA shall contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company’s operations as required by the 911 system.

16. NTERA shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, NTERA shall keep financial records on an intrastate basis for South Carolina to comply with the annual report and gross receipts filings. The “Annual Report for Competitive

Local Exchange Carriers” form can be located at the Commission’s website at www.psc.state.sc.us/forms. This form shall be utilized by the Company to file annual financial information with the Commission. Gross receipts forms are due to be filed with the Commission no later than October first of each year.

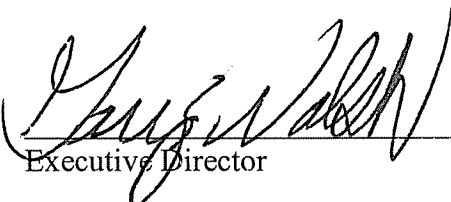
17. Each telecommunications company certified in South Carolina is required to file annually the Intrastate State Universal Service Fund (USF) worksheet. This worksheet provides the Commission Staff information required to determine each telecommunications company’s liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than August 15th.

18. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

Docket No. 2001-438-C

Re: Application of NTERA, Inc. for a Certificate of)
Public Convenience and Necessity to Provide Local)
Exchange and Interexchange Telecommunications)
Services in the State of South Carolina)
_____)

STIPULATION

The South Carolina Telephone Coalition ("SCTC") (see attachment "A" for list of companies) and NTERA, Inc. ("NTERA") hereby enter into the following stipulations. As a consequence of these stipulations and conditions, SCTC does not oppose NTERA's Application. SCTC and NTERA stipulate and agree as follows:

1. SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to NTERA, provided the South Carolina Public Service Commission ("Commission") makes the necessary findings to justify granting of such a certificate, and provided the conditions contained within this stipulation are met.
2. NTERA stipulates and agrees that any Certificate which may be granted will authorize NTERA to provide service only to customers located in non-rural local exchange company ("LEC") service areas of South Carolina, except as provided herein.
3. NTERA stipulates that it is not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas.
4. NTERA stipulates and agrees that it will not provide any local service, by its own facilities or otherwise, to any customer located in a rural incumbent LEC's service area, unless and

until NTERA provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Also, NTERA acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause.

5. NTERA stipulates and agrees that, if NTERA gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, and either (a) the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law within such 30-day period, or (b) the Commission institutes a proceeding of its own, then NTERA will not provide service to any customer located within the service area in question without prior and further Commission approval.

6. NTERA acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures, and guidelines do not conflict with Federal or State law.

7. The parties stipulate and agree that all rights under Federal and State law are reserved to the rural incumbent LECs and NTERA, and this Stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled.

8. NTERA agrees to abide by all State and Federal laws and to participate, to the extent it

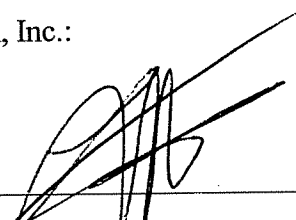
may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

9. NTERA hereby amends its application and its prefiled testimony in this docket to the extent necessary to conform with this Stipulation.

AGREED AND STIPULATED to this 10th day of December,

2001.

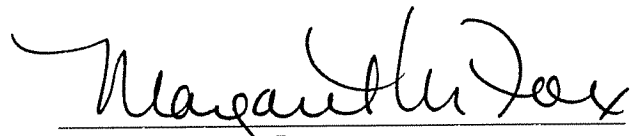
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Attorneys for the South Carolina Telephone
Coalition

ATTACHMENT A

South Carolina Telephone Coalition Member Companies for Purposes of Local Service Stipulation

ALLTEL South Carolina, Inc.
Chesnee Telephone Company
Chester Telephone Company
Farmers Telephone Cooperative, Inc.
Ft. Mill Telephone Company
Heath Springs Telephone Company Inc.
Home Telephone Company, Inc.
Lancaster Telephone Company
Lockhart Telephone Company
McClellanville Telephone Company
Norway Telephone Company
Palmetto Rural Telephone Cooperative, Inc.
Piedmont Rural Telephone Cooperative, Inc.
Pond Branch Telephone Company
Ridgeway Telephone Company
Rock Hill Telephone Company
Sandhill Telephone Cooperative, Inc.
St. Stephen Telephone Company
West Carolina Rural Telephone Cooperative, Inc.
Williston Telephone Company

BEFORE
THE PUBLIC SERVICE COMMISSION OF
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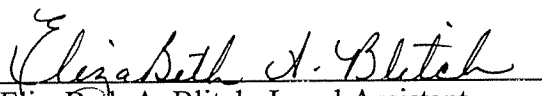
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Services in the State of South Carolina)
_____)

**CERTIFICATE OF
SERVICE**

I, ElizaBeth A. Blich, do hereby certify that I have this date served one (1) copy of the foregoing Stipulation upon the following party of record by causing said copy to be deposited with the United States Mail, first class postage prepaid to:

Scott Elliott, Esquire
Elliott & Elliott, P.A.
721 Olive Street
Columbia, South Carolina 29205


ElizaBeth A. Blich, Legal Assistant
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December 11, 2001

Columbia, South Carolina